Commissariat aux services en français de l'Ontario

Office of the French Language Services Commissioner of Ontario

Annual Report 2015 16

FLSA 2.0

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2016

LETTER TO THE SPEAKER

June 1, 2016

The Honourable Dave Levac
Speaker
Legislative Assembly
Province of Ontario
Queen's Park

Mr. Speaker,

In accordance with section 12.5(1) of the ***French Language Services Act***, I am pleased to submit to you the ninth Annual Report of the French Language Services Commissioner of Ontario.

This report covers the period from April 1, 2015, to March 31, 2016.

Please table this report in the Legislative Assembly, as specified in section 12.5(3) of the ***Act***.

Respectfully,

François Boileau

French Language Services Commissioner

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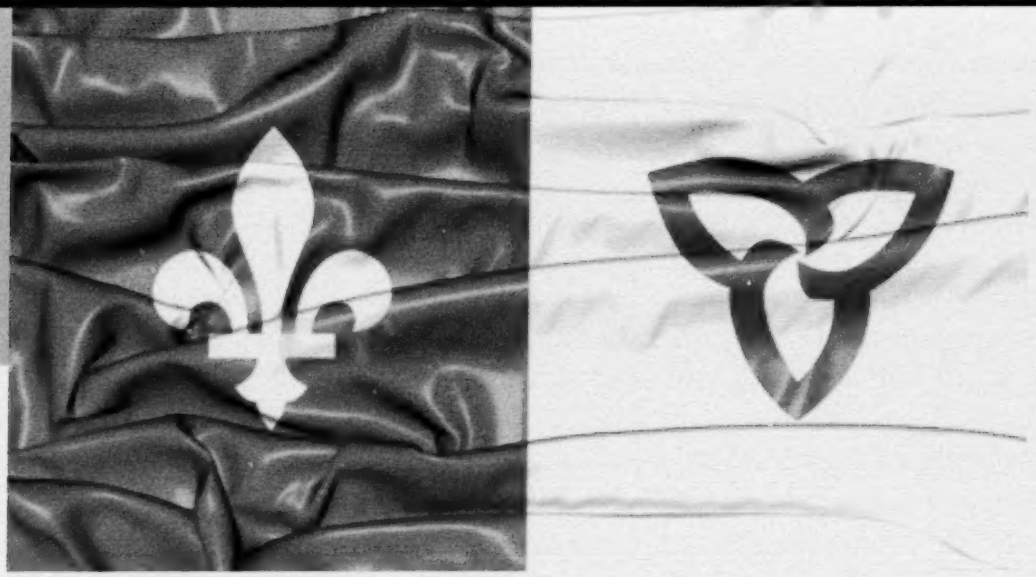
FOREWORD

In the previous editions of my annual report, I attempted to initiate a dialogue with MPPs by trying to explain in greater detail what we do in the Commissioner's Office, for example, by focusing on what our complainants are experiencing. I believe that over the years, we have managed to show what a serious impact not receiving high-quality French-language services can have on the lives of our fellow citizens, especially those in vulnerable situations.

Hence, I paid particular attention to ensuring that our recommendations had, in the vast majority of cases at least, systemic implications, in hopes that the government would put in place optimum conditions so that Franco-Ontarians would trust their government enough to ask for services in French. The government often responded positively, and improvements followed.

When faced with these systemic problems, which the members of my team and I observed, the first — and often only — reaction is to turn to the source of the obligations, the ***French Language Services Act*** (***FLSA***).

This year, we are celebrating the 30th anniversary of the good old ***Act***. It has never undergone a major revision, and I believe now is the right time to modernize it. Bringing it up to date will make it even more useful to Francophones and the government. Accordingly, this annual report is mainly focussed on that important step. It was a pivotal year for Ontario's Francophonie in 2015, with the festivities surrounding the 400th anniversary of the French presence in Ontario. That momentum must not be lost, and in a minority context, if you're not moving forward, you're falling back.



It has also been a watershed year for the Commissioner's Office. First, in addition to being a founding member of the International Association of Language Commissioners, it joined the Association des Ombudsmans et Médiateurs de la Francophonie in Québec City. We are happy to be able to learn more best practices with the help of international colleagues, and we will actively pursue the acquisition of new knowledge. In return, the Commissioner's Office will offer the expertise it has acquired in a number of areas, of which I am obviously very proud.

Second, in July 2015, the Legislative Assembly approved funding allocations that will enable us to stop being mostly reactive and be more proactive, to do more monitoring, to stop falling behind in the processing of some of our complaints, and to explore the possibility of becoming a true centre of excellence in services to minority language communities. Our small team has been absolutely exceptional over the years, and I want to extend my warmest thanks to every member of our staff. Third, since January 2016, we have had a new Executive Director, Jean-Gilles Pelletier, who will lead the Commissioner's Office where it needs to go. I hope you enjoy reading this ninth annual report, and here's hoping for ***FLSA*** 2.0!

EXECUTIVE SUMMARY

This year, 2016, marks the 30th anniversary of the ***French Language Services Act***. Such an anniversary is cause for celebration, of course, but it is also a particularly opportune time to take a moment to reflect on the words chosen in 1986 and consider whether the ***Act*** should be updated. This year, the Commissioner is devoting his annual report to the pursuit of one key objective: present an extensive blueprint for a comprehensive revision of the ***Act***.

In this context, the Commissioner is reviewing and analyzing certain parts and sections of the ***Act*** to demonstrate that they are out of date and in serious need of an overhaul. In particular, there is a need to redefine the concepts of services and communications as they are used in the ***Act***. In an era when technology and social media are routinely incorporated into government activities, a more modern definition is a pressing necessity. The same applies to the definition of government agency.

This report also demonstrates the importance, in any revision of the ***Act***, of eliminating the ambiguities in the wording of a number of clauses dealing with the roles and responsibilities of key players in implementing and enforcing the ***Act***. In particular, the Commissioner proposes adjustments in the roles of the Minister Responsible for Francophone Affairs, the Office of Francophone Affairs, the French-language services coordinators and a new advisory council on Francophone affairs, as well as in his own role.

Since a revision of the ***Act*** is necessary, the Commissioner is taking advantage of the opportunity to recommend the addition of critical provisions relating to French-language services. Those provisions deal with such matters as the purpose of the ***Act***, active offer, the translation of regulations, the Inclusive Definition of Francophone (IDF), consultations with the Francophone community, and regulatory colleges.

In this report, the Commissioner makes three recommendations to initiate the process of revising the ***Act*** no later than the fall of 2016, which will coincide with the 30th anniversary of the ***French Language Services Act***.

RECOMMENDATIONS

Recommendation 1

The Commissioner recommends that the Minister Responsible for Francophone Affairs propose to the Legislative Assembly a comprehensive revision of the ***French Language Services Act***, which should but not be limited to, the following issues covered in this report:

A) Preamble

B) Purpose of the act

C) Definitions

   I. "government agency"

   II. "services"

   III. "communications"

D) Inclusive Definition of Francophone (IDF)

E) Consultations with the Francophone community

F) Formalization of an advisory council on Francophone affairs

G) Translation of regulations

H) Designation of areas

I) Designation of agencies

J) Exemptions

K) Active offer

L) Regulatory colleges

M) Staffing of bilingual positions and human resources

N) Roles and responsibilities

   I. Minister Responsible for Francophone Affairs

   II. Office of Francophone Affairs

   III. French-language services coordinators

   IV. French Language Services Commissioner

Recommendation 2

The Commissioner recommends that the Minister Responsible for Francophone Affairs initiate the process of revising the ***French Language Services Act*** during the Current Session of Parliament, no later than the fall of 2016, as part of the ***Act's*** 30th anniversary.

Recommendation 3

The Commissioner recommends that the Minister Responsible for Francophone Affairs launch, without delay, a mechanism for consulting the residents of Ontario, particularly the Francophone community, as a first step in the process of revising the ***French Language Services Act***.

1. THIRTY YEARS OF THE *FRENCH LANGUAGE SERVICES ACT*

"(...) the governments of Ontario had, over the years, changed their policy toward the French language. The Bill was the result of years of successive steps toward the goal of providing services to Francophones in their own language."
- Court of Appeal for Ontario[1]

It took years of struggle to get the ***French Language Services Act*** passed. In fact, its unanimous adoption in 1986 was the result of demands made more than a century ago by the French-speaking community to have its rights recognized.

The then Minister Responsible for Francophone Affairs, the Honourable Bernard Grandmaître[2], deserves all the credit for the passage of Bill 8, which became the ***French Language Services Act***. An important and historic gain, the ***Act*** was also a bet on the future of a community.

But now, 30 years have passed without a major revision of the ***Act***. That is too long. The Ontario of the 1980s no longer exists. The face of the Francophonie has changed. Cultural diversity has emerged. Attitudes are different, as are modes of communication for that matter. In the era of social media, Ontario's Francophonie is evolving, but its rights have not kept pace.

Thirty years ago, the ***French Language Services Act*** served as a model and a trail-blazer for other legislation. Things are very different in 2016. Other legislatures have passed more modern laws that better reflect today's realities. That is particularly true of Prince Edward Island and Nunavut, from which Ontario can now take inspiration.

It is in this context that the French Language Services Commissioner of Ontario is devoting this annual report to a revision of the ***French Language Services Act***.

1 *Lalonde* v. *Ontario (Commission de restructuration des services de santé)* (2001) 56 O.R. (3d) 577, para. 142.
2 The contribution of the opposition MPP, the Honourable Albert Roy, must not be forgotten. He had also filed a bill to that effect a few years previous.

1.1. Preamble to a preamble

"Whereas the French language is an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada; and whereas in Ontario the French language is recognized as an official language in the courts and in education; and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the French speaking population and wishes to preserve it for future generations; and whereas it is desirable to guarantee the use of the French language in institutions of the Legislature and the Government of Ontario, as provided in this *Act*;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:"[3]

3 *French Language Services Act*, R.S.O. 1990, c. F.32.

The preamble of an act is in some sense an explanation of the reasons for which the members of the Legislative Assembly decided to pass it. Preambles often contain historical references to provide some context for legal texts, which tend to be colourless.

To interpret the preamble of the ***French Language Services Act***, we have to go back to its source. Section 16(1) of the ***Canadian Charter of Rights and Freedoms*** states that English and French are the official languages of Canada, and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada.

Section 16(3) states that nothing in the Charter limits the authority of Parliament or a legislature, such as the Legislative Assembly of Ontario, to advance the equality of status or use of English and French. This is the constitutional framework for the ***Act***.

A preamble is not a source of positive law, but in the absence of a provision, describing the act's purpose, a preamble can be very useful. This was particularly true in the ***Lalonde*** (Montfort Hospital) case, in which the Court of Appeal for Ontario referred to the ***Act's*** quasi-constitutional nature. Or, as noted by the former Chief Justice of the Supreme Court of Canada, the Right Honourable Antonio Lamer, the preamble to the Constitution, ***"invites the courts to turn those principles into the premises of a constitutional argument that culminates in the filling of gaps in the express terms of the constitutional text."***[4]

The courts must interpret language rights, including Ontario's ***French Language Services Act***, in the light of the language right's purpose. Thus, the exercise of language rights must not be seen as a request for accommodation. And in this sense, substantive equality — taking the minority community's needs into account in the delivery of services — as opposed to formal equality, must be the norm.

4 *Lalonde v. Ontario, op. cit.*, para. 116.

In summary, the wording of the ***Act's*** current preamble is quite strong. It states that it is desirable to **guarantee** the use of the French language in institutions of the Legislature and the Government of Ontario. Consequently, in the ***Lalonde*** case, the Court of Appeal for Ontario did not hesitate to refer to the preamble in deciphering the lawmakers' intention for the purpose of interpreting section 5 on communications with and services to the public. Of course, it will be possible and necessary to improve the preamble considerably once a purpose for the ***Act*** has been added as part of the revision process.

1.2. Plea for a statement of purpose in the *French Language Services Act*

While the provisions in the preamble of the ***French Language Services Act*** provide information about the Legislature's intention, the same cannot be said about the ***Act's*** purpose. There is no statement of purpose in the ***Act***, which is an anomaly that needs to be rectified. This did not stop the Court of Appeal for Ontario from referring to the ***Act's*** two main underlying objectives: (1) protection of Ontario's ***Francophone minority population***, and (2) ***advancement of the French language*** and promotion of its equality with English.[5]

If those are the purposes of the law, with which the Commissioner concurs, they should be clearly stated in a revised version of the ***Act***.

Moreover, the rights and obligations set out in the ***Act*** have no meaning unless they are taken collectively. A single individual is entitled to receive services in French if he/she is in a designated area, of course. But the services provided to that individual and his/her family will have full import only if they benefit the entire Francophone community in the area concerned.

Interesting approaches

The idea of including concepts of rights and obligations in respect of official language minority communities — and not just individual rights — is not new.

In 1977, in a hard-hitting manifesto entitled *Les héritiers de Lord Durham*[6] [The Heirs of Lord Durham], the Fédération des francophones hors Québec (now the FCFA

5 *Ibid.*, para.143.

6 Fédération des francophones hors Québec (1977), ***Les héritiers de Lord Durham***, Ottawa, 1977. Available online: http://www.fcfa.ca/user_files/users/40/Media/heritiers_de_lord_durham.pdf (page consulted in May 2016).

du Canada) took a position in favour of a global, specific, coherent policy for the development of French linguistic and cultural communities (p. 18). Every action by this organization representing one million minority Francophones was undertaken with a view to advancing this ultimate objective. For example, the major amendments to the ***Official Languages Act*** (OLA) in 1988, one of which was the addition of Part VII, were made in an effort to reflect this need. The Action Plan for Official Languages and later the Roadmap for Canada's Official Languages of subsequent federal governments were also inspired by this desire to address the concrete needs and legitimate aspirations of official language minority communities.

Indeed, it is only logical to believe that public services to individuals must also have a community component, since the individual will be able to preserve his/her language only if he/she can communicate with other members of the community. In addition, in the Commissioner's view, the Ontario government must make every effort to ensure that its policies, programs, services, communications and other content benefit the Franco-Ontarian communities scattered across the province. A statement of purpose in a revised ***French Language Services Act*** should contain explicit provisions concerning these new policies of government ministries and agencies.

Accordingly, **the Commissioner recommends to the Minister Responsible for Francophone Affairs that legislative amendments be introduced to ensure that the revised *French Language Services Act* has a practical, concrete impact in support of the development and growth of the Francophone community across the province, ideally in its statement of purpose but also in particular provisions.**

To that end, the government will need to understand the community's needs. Hence, the new ***Act*** should have specific provisions concerning not only the necessity of properly consulting community members but also the means selected to do so, although that could also be done through regulation.

1.3. Francophone community of Ontario

Back in 1985, the Supreme Court of Canada wrote the following:

> "The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another, and thus to live in society."[7]

Without a community, without a society, language no longer performs its function of transmitting and conveying culture. That is one of the factors underlying the ***Act***, which, in its preamble, requires recognition of the rights of the community living in that language and of the government's obligations to that community.

Ontario's Francophone community must be treated just as the rest of the population is treated. In some cases, that means a simple translation of a policy will suffice. Very often, however, to achieve substantive equality and, above all, to be useful and effective, policies and programs will have to be tailored to that community's particular needs.

7 Re Manitoba Language Rights, [1985] 1 S.C.R. 721, p. 744.

1.3.1 A better understanding of its needs

In his first annual report (2007-2008), entitled ***Paving the Way***, the Commissioner pointed out some of the government's best practices:

> "The Commissioner often reminds administrators of government agencies of the importance of truly understanding the needs of their target Francophone clientele (...). Fortunately, several government initiatives confirm that these precedents are already in place."

Over the last few years, the Commissioner has been pleasantly surprised by the introduction of policies and new programs and services that are manifestly designed for the province's Francophones. These events were invariably noted in his annual reports.

For example, the annual meetings organized by the justice sector's French Language Services Coordinator with the province's Francophone community stakeholders laid a solid, forthright foundation for dialogue between the community and the government. As a result, the former has a better understanding of the government's priorities, and the latter has a better understanding of the real needs and the difficulties with access to justice. This does not solve all the problems, but the discussions lead to initiatives and actions that are unquestionably productive for all parties concerned.

Another example would be the 2011 launch of the Sexual Violence Action Plan - Changing Attitudes, Changing Lives. Beginning with the initial consultations, regional meetings have been held in communities in every part of the province. Francophone victims of sexual violence and front-line workers were invited to participate and share their views on the support they need.

The consultation mechanism is instrumental in designing government policies and programs that meet the needs of the individuals and communities concerned. However, this practice is not followed systematically by all ministries. Last year, for example, the

Commissioner talked about the new provincial strategy for youth mental health. Instead of including the specific needs of Francophone youth from the outset, despite a number of recommendations to do so from community organizations, the government found itself playing catch-up to ensure that young Francophones would be properly served. It is in cases such as this that consultations help determine the nature of the service and the client group's needs.

> "Depending on the nature of the service in question, it is possible that substantive equality will not result from the development and implementation of identical services for each language community. The content of the principle of linguistic equality in government services is not necessarily uniform. It must be defined in light of the nature and purpose of the service in question."[8]

But for education, health, citizenship and immigration, community and social development, senior citizens, justice, and many other areas, it is important to make sure that future services will be delivered properly to the public. As the Supreme Court of Canada indicates, the nature and purpose of the service must dictate how these services will be provided by the government. And there is only one way to deliver them properly: by fully understanding the needs of the groups concerned. That is why consultation is so important, especially in minority situations.

In other words, **if language is a key factor in the efficacy of the proposed program or service, then consultation with the Franco-Ontarian community is necessary**. If we are talking about relational services, which require the establishment of a helping,

8 *Desrochers v. Canada (Industry)*, [2009] 1 S.R.C. 194, 2009 SCC 8, para. 51.

therapeutic or other kind of relationship, consultation is even more important. On the other hand, if the services are normative or regulatory services, where the relational context is not very important, such as the introduction of a new policy on recycling used tires, there is no valued added in consulting the community.

In view of the foregoing, **the Commissioner recommends that the Minister Responsible for Francophone Affairs incorporate into a revised *Act* that when a policy, program, service or activity of the Ontario government or one of its agencies is still at the development stage, and if language is a key factor in the efficacy of the proposed policy, service or activity, appropriate consultations with the Francophone community be announced and conducted.**

1.3.2 Public consultations

In the past, the Commissioner's Office has received many complaints about the public consultations held by government ministries and agencies.

And for good reason. It is often poorly understood that, in most situations, public consultations must be held in French and in English, but not in both languages.

When Francophones must take part in a public consultation process that is "nominally bilingual" with simultaneous interpretation, it does not work. There have to be public meetings in French, announced in advance in appropriate French-language media.

We should take a page, once again, from Prince Edward Island's ***French Language Services Act***, section 4 of which requires that **the government, its own institutions and its spin-off institutions ensure that members of the public have the opportunity to participate in public consultations, either in writing or electronically, in English and French**.

1.3.3 Formalization of an advisory council

In 2004, the Minister Responsible for Francophone Affairs, to her credit, established the Provincial Advisory Committee on Francophone Affairs. This committee, composed of 12 representatives of the Franco-Ontarian community, often works behind the scenes and closed doors. It observes how the ***Act*** is implemented by ministries and agencies, frequently requests that senior managers attend its meetings, and provides advice to the Minister on public policy issues and other current issues that have an impact on the quality of French-language services.

It would be desirable to have this consultation process formalized in the ***Act***, as it is in Prince Edward Island's ***French Language Services Act***. The committee's work would therefore be enhanced.

Currently, the mandate of Ontario's Provincial Advisory Committee on Francophone Affairs is to provide advice to the Minister Responsible for Francophone Affairs on the development of strategies, priorities and programs that affect Ontario's Francophone community, and on the planning and delivery of government French-language services.

Prince Edward Island's advisory committee is responsible for reviewing, out of the variety of services provided by a designated institution, those which are considered priority services for the province's Acadian and Francophone community. This is an innovative and interesting concept, which takes advantage of the committee members' expertise.

But it could do much more.

The membership of the committee, which should be converted into a council, should be standardized. The members could be appointed by the Minister.

There is already an important precedent in Ontario, since the *Local Health System Integration Act, 2006*, in section 14, specifies the composition of a French Language Health Services Advisory Council. The Council is mandated to advise the Minister about health and service delivery issues related to francophone communities, and priorities and strategies for the provincial strategic plan related to those communities.

This precedent may be highly useful. The government determined which organizations would have a seat on the council by regulation.

Consequently, **the Commissioner recommends that the Minister Responsible for Francophone Affairs introduce a legislative amendment to the *French Language Services Act* concerning the establishment of a Provincial Advisory Council on Francophone Affairs, whose mandate would be the planning and delivery of French-language government services; and the development of strategies, priorities, intervention areas and programs that affect Ontario's Francophone community. The Council could have as many as 12 members from various areas of the province.**

1.4. Inclusive Definition of Francophone (IDF)

When the Commissioner took office in 2007, he wanted to lay the groundwork for a current, workable, inclusive definition of Ontario's Francophonie. Accordingly, that was the first recommendation in his first annual report (2007-2008). The recommendation was acted on quickly, as the government introduced the new Inclusive Definition of Francophone (IDF) in 2009.

Its reception and impact were highly favourable. Under this new definition, Francophones are "persons whose mother tongue is French, plus those whose mother tongue is neither French nor English but have a particular knowledge of French as an Official Language and use French at home." [9]

By virtue of the IDF, members of ethnocultural communities were officially recognized and included as Francophones in Ontario.

> "A Franco-Ontarian of Cameroonian origin, I am proud to belong to this multifaceted Francophonie that promotes the persistence and contribution of minority Francophones in Ontario.
>
> The Inclusive Definition of Francophone enables us to truly expand the Francophone space through economic partnerships and cultural alliances and to experience our Francophone pride as added value."
>
> -Léonie Tchatat
> Founder and President, La Passerelle-I.D.É.

Despite this pedigree, seven years after the introduction of the IDF, we need to consider whether the time has come to review the definition to ensure that it is sufficiently inclusive. In fact, this review should be carried out periodically by the Minister through regulations.

1.4.1 Evolution of the Franco-Ontarian community

A community can be defined not only by its geography, such as large urban centres or regions, but also by its interests. The members of Francophone communities live in

9 For more information: http://ofa.gov.on.ca/en/franco-definition.html (page consulted in May 2016).

every part of Ontario, including major urban agglomerations such as Toronto, Ottawa, Hamilton and London. However, as noted by the federal Commissioner of Official Languages:

> "In addition to the villages, neighbourhoods, towns or regions with which OLMCs [official language minority communities] identify, there are communities whose primary link is a shared interest in their language. For these communities of interest, the territorial footprint is less important than the network of interactions into which the individuals and the groups breathe life around the focus of their common interest in the minority language."[10]

This is especially true in Ontario, where the pattern of immigration is altering the picture considerably. "Today we speak of a link between linguistic duality and cultural diversity, not only in the official language majorities, but also in the minorities."[11] Nearly half of all Francophones in the Greater Toronto Area were born outside Canada. Figures don't lie: the Francophone population keeps growing in Ontario, in absolute terms at least, mainly because of immigration and interprovincial migration.

1.4.2 Use of the IDF

As the Commissioner has pointed out before, the IDF is not always used systemically as a common or uniform measure by government ministries and agencies. Although the Office of Francophone Affairs developed a communications plan to make them aware of the importance of using the IDF, there is no getting around the fact that so far, little has changed.

---

10 Johnson, Marc and Doucet, Paule, *A Sharper View: Evaluating the Vitality of Official Language Minority Communities*, Ottawa, Office of the Commissioner of Official Languages of Canada, 2006, p. 11.

11 *Ibid.*, p. 14.

In its Fact Sheet 6 on mother tongue and languages,[12] the Ministry of Finance of Ontario does not take the IDF into account. According to the Ministry, it would require more research, and different definitions and concepts. This fact sheet only refers to mother tongue and other languages spoken. Similarly, the Ministry of Education does not use the IDF systematically in its analyses of French-language school enrolment.

Moreover, although specific IDF statistics produced by the Office of Francophone Affairs can be obtained upon request, they are not made publicly available for all regions or age groups. Also, the IDF is not available through public or semi-custom tabulations from Statistics Canada.[13] Consequently, a provincial ministry, such as the Ministry of Finance, that wants specific data using the IDF has to submit a custom order to Statistics Canada.

Revision of the ***French Language Services Act*** would be a perfect opportunity to include a clause on the IDF. It would probably also encourage the Ontario government to try to persuade the federal government to add the IDF to the list of basic variables for ordering data.

Such a change would also be beneficial on other levels, including the integration of newcomers. Whether in relation to French-language school enrolment or admission policies in general, incorporating the IDF in the ***French Language Services Act*** would confirm the presence of a diverse community recognized by the Legislature, thereby sending a strong message to Francophone newcomers and the community.

Therefore, **the Commissioner recommends that the Minister Responsible for Francophone Affairs consider incorporating the IDF into a revised *Act*, and even to consider revising the IDF in light of advances made in other provinces so that it remains inclusive and helps improve the planning of French-language services by all Ontario government ministries and agencies.**

12 Available online: http://www.fin.gov.on.ca/en/economy/demographics/census/cenhlin-6.pdf (page consulted in May 2016).

13 Note that Statistics Canada provides "adjustable" data for such categories as low-income cut-offs, which vary by household size, urban or rural area, and so on.

1.5. Government agencies

The definition of government agency was developed 30 years ago. We should now take advantage of a revision of the ***Act*** to update the definition, ensure that it reflects today's reality and close the loopholes it currently has.

At the moment, the ***Act*** provides that public service agencies may be designated under the ***Act***. The ***Act*** also says that if the majority of the members or directors are appointed by the Lieutenant Governor in Council,[14] the agency in question is subject to the ***Act***.

This approach may have been an innovative idea in 1986, but it is no longer the case. And the Commissioner has been unable to intervene in many situations.

Tarion is a well-known example that the Commissioner has mentioned often. Tarion administers the Ontario New Home Warranties Plan, educates new home buyers and new home owners about their warranty rights and responsibilities, and resolves disputes between builders and homeowners. It has a 16-member board of directors; five of the members are appointed by the government. It also has a nominations committee composed of five members, two of whom are appointed by the government. Because of the requirement that the majority of the board members be appointed by the government, this public agency is not subject to the ***Act***. Even though the Commissioner's Office has resolved some complaints about Tarion in the past, concerns persist regarding the accountability of this so-called "arm's-length" agency. It would be much more efficient if the Commissioner could intervene directly with Tarion.

Another example is the Retirement Homes Regulatory Authority (RHRA). Even though it offers service in French, the RHRA is not, officially and legally speaking, subject to the ***Act*** because only four of the nine members of its board of directors are appointed by the Lieutenant Governor in Council, and the Minister designates one board member as the chair.

14 The Lieutenant Governor in Council approves the appointments on the advice of the Executive Council (the Cabinet).

The need to update the definition of government agency is quite urgent. A more modern definition would be helpful, as evidenced by the New Brunswick and federal laws.

In New Brunswick, the term "institution" means the following:

> "(...) an institution of the Legislative Assembly or the Government of New Brunswick, the courts, any board, commission or council, or other body or office, established to perform a governmental function by or pursuant to an *Act* of the Legislature or by or under the authority of the Lieutenant-Governor in Council, a department of the Government of New Brunswick, a Crown corporation established by or pursuant to an *Act* of the Legislature or any other body that is specified by an *Act* of the Legislature to be an agent of Her Majesty in right of the Province or to be subject to the direction of the Lieutenant-Governor in Council or a minister of the Crown; (institution)"[15]

At the federal level, an institution is defined as follows:

> "(...) any board, commission or council, or other body or office, established to perform a governmental function by or pursuant to an *Act* of Parliament or by or under the authority of the Governor in Council, (...) a department of the Government of Canada, (...) a Crown corporation established by or pursuant to an *Act* of Parliament, and (...) any other body that is specified by an *Act* of Parliament to be an agent of Her Majesty in right of Canada or to be subject to the direction of the Governor in Council or a minister of the Crown".[16]

A number of transformations have altered the means by which government services are delivered: not only delegation and devolution to so-called arm's-length bodies, but also transfer of responsibilities to agencies mandated by government ministries to provide programs and services that used to be delivered by the province. In view of these changes, the definition of government agency, particularly the part concerning the number of board members appointed by the government, is outdated.

15 *Official Languages Act* of New Brunswick, c. O-0.5.
16 *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.), s. 3(1).

1.5.1 Examples of the outdated definition's impact

The majority of the members of the boards of directors of corporations such as Hydro One and Ontario Power Generation are not appointed by the Lieutenant Governor in Council. As a result, those corporations are not required to provide French-language services under the current statute. While the ***Freedom of Information and Protection of Privacy Act*** and the ***Public Sector Salary Disclosure Act, 1996*** apply, the ***French Language Services Act*** does not. In fact, it was in this context that the Commissioner recommended in 2009-2010 that any statute authorizing privatization contain specific clauses expressly indicating that the rights prescribed in the ***Act*** shall continue to apply.

The same goes for public health units, about which the Commissioner's Office receives many complaints. In his 2009-2010 annual report, the Commissioner recommended that public health units implement the **Act** when all or part of the funding is provided by the province. However, to this day, the Ministry of Health and Long-Term Care position remains that the ***French Language Services Act*** does not currently apply to boards of health/public health units, as the definition of "government agency" under the ***Act*** does not include municipalities or local boards as defined under the ***Municipal Affairs Act***.

Another sector that is currently outside the Commissioner's purview is education. **School boards** do not satisfy the current criteria. Yet, the Commissioner constantly receives complaints about this sector, which is so critical for the development of Francophone communities and the vitality of the French language in Ontario. Quite recently, Ontario's lawmakers realized this and gave the provincial ombudsman the power to deal with complaints from the public about school boards. This would not be duplication of effort; rather, it would ensure that the right officer investigates complaints pertaining to his/her area of expertise. This would make the Commissioner's powers not only more comprehensive but also more strategic and effective in areas affecting the promotion of the French language in Ontario.

1.5.2 Need for a new definition

Every year, the Commissioner's Office receives an average of 25 to 30 complaints that fall into the "Other" category. These complaints are difficult to classify, because they are associated with agencies created or mandated by ministries to deliver programs and services that, in responsibility transfer cases, used to be provided by the province. These so-called arm's-length agencies are not subject to the obligations in the ***Act***. This legal gap should be filled so that Francophone citizens have equitable access to French-language services, regardless of whether a majority of the board is appointed by the government. This loophole is no longer acceptable in a society that has to deal with a wide range of suppliers of public services that often define themselves as independent and exempt from any obligation to serve Francophone communities.

In this context, **the Commissioner recommends that the government take advantage of the revision of the *French Language Services Act* to introduce a broader, more modern definition of government agency which would apply to any office, board, commission, council or other body mandated to perform a governmental function by or pursuant to an act of the Legislature or by or under the authority of the Lieutenant Governor in Council, a ministry of the Government of Ontario, a Crown corporation established by or pursuant to an act of the Legislature or any other body that is specified by an act of the Legislature to be an agent of Her Majesty in right of Ontario or to be subject to the direction of the Lieutenant Governor in Council or a minister of the Crown.**

1.6. Translation of regulations

"ATTENTION : Les règlements ne sont pas tous bilingues. Consulter l'interface anglaise pour accéder à tous les règlements en vigueur."

(WARNING: Not all regulations are bilingual. For access to all current regulations, see the English interface.)

- Home page of e-Laws, Government of Ontario[17]

At the moment, Ontario regulations are translated into French at the discretion of the Attorney General. The reason is quite simple: provincial regulations do not have to be bilingual to be valid. This practice is far from compliant with the spirit of the ***French Language Services Act***, and consequently, the Commissioner's Office is actively pursuing this issue, which is especially important because some regulations directly affect the public's health and safety.

For example, because Ontario's Fire Code is available in English only, City of Ottawa firefighters had to include English excerpts from the regulation in reports written in French.

The situation is similar in construction, as Ontario's Building Code is only available in English. In fact, a builder in the designated area of Sudbury complained to the Commissioner's Office, saying he did not have the resources to translate the Code for his employees.

The ***Building Code Act, 1992***, governs the construction, significant renovation, change of use, and demolition of buildings. Property owners are required to obtain a building permit prior to undertaking work addressed by the ***Act***. However, it is difficult for them to comply

17 Available online: www.ontario.ca/fr/Lois (page consulted in May 2016).

with the Code's requirements if they do not understand the English version and the intricacies of the regulation. An Ottawa property owner complained about this situation to the Commissioner's Office:

[Translation] "The fact that Ontario's Building Code has not been translated leaves me open to a charge of not complying with the regulation if I don't understand it perfectly."

However, there is some good news: the Ministry of Municipal Affairs and Housing is planning to translate Ontario's voluminous Building Code into French. The Ministry has started work on the next edition, which is proposed to be published in 2018, and intends to have it translated.

Some regulations clearly contain important safety or health information, especially in relation to the workplace. A recommendation on this point was made in 2009 to the Ministry of the Attorney General to adopt criteria for prioritizing the translation of regulations. In fact, the Commissioner still has his list of nine proposed criteria. In response, the Ministry promised to review its processes.

The Commissioner acknowledges that a great deal of work has been done on translating regulations. By the end of 2015-2016, 46,5% of all English-only regulations had a French version. To put it in perspective, however, that means that barely half of Ontario's regulations have been translated since the ***French Language Services Act*** was passed 30 years ago.

The Commissioner therefore recommends that the Minister Responsible for Francophone Affairs propose that the revised *Act* give the Lieutenant Governor in Council the power to make a regulation on the criteria to be met for the translation of regulations, rather than leave it entirely to the discretion of the Attorney General.

The government could then adopt a regulation containing criteria for the translation of regulations, based on the nine criteria suggested by the Commissioner in 2009.

Source: OFA

1.7. Designation

1.7.1 Areas

Designation of an area under the ***French Language Services Act*** in Ontario gives a community the right to receive services in French from the provincial government.

Although there are currently 26 areas, designation does not just happen by itself. It is obtained through the Office of Francophone Affairs (OFA), which is responsible under the ***Act*** for recommending or not recommending designation.

The OFA first has to carry out a statistical and operational analysis based on the Inclusive Definition of Francophone. That analysis determines whether the area to be designated has a Francophone population that either consists of 5,000 people in a so-called urban centre or makes up 10% of the local population. However, these two criteria are not in the ***Act***.[18]

Then, based on the results of the analysis, the OFA either recommends or does not recommend that the Minister Responsible for Francophone Affairs proceed with designation, which is submitted to Cabinet and the Lieutenant Governor.

1.7.1.1 Evolution of the designation process

In 2012, the OFA introduced a new analytical framework for the designation process. This framework is intended to ensure more standardized processing of applications by communities in an effort to move toward qualitative rather than quantitative criteria.

The Commissioner welcomed this approach, but he had reservations. The new analytical framework has an additional criterion under the heading of "Community Support". In addition to meeting the original criteria, applications for designation must include official letters of support from all local MPPs. This concept of community support and mobilization of the community would "give a helping hand" to applications that do not meet the statistical requirements. This approach bore fruit with the designation of Kingston.

18 In fact, these statistical criteria are taken from the Royal Commission on Bilingualism and Biculturalism, which advocated the establishment of bilingual districts where the three levels of government would be required to serve the public in both official languages.

To the Commissioner, this is similar to a general rule requiring unanimity. Some localities have strong community support, while that support is not fully reflected on the municipal council, which may, for example, have financial concerns, even though they are groundless in most cases. "Community support" thus becomes an additional responsibility placed on the shoulders of the community rather than the government.

1.7.1.2 Markham but not Oshawa

In the spring of 2015, the OFA held a consultation process on the designation of the Markham and Oshawa areas. This culminated in the designation of the City of Markham, which became the 26th area designated under the ***Act***.

On the other hand, several years after submitting their applications for designation, some areas are still waiting, such as Waterloo, Niagara and ... Oshawa! In Oshawa's case, the application dates back to 2009. In fact, the entire Durham region wanted to be designated at the time. However, because some local elected representatives withheld their support, only Oshawa's application was submitted. The government says it is still working toward the eventual designation of Oshawa. The fact remains, though, that the support of ***all*** local MPPs is now a requirement.

This situation is very inequitable in view of the efforts made by the community, and it must stop. The fate of an area's application for designation cannot be left in the hands of a single recalcitrant elected representative.

1.7.1.3 The necessity of receiving services in French

Some people question the idea of designation in this technological era, when we can go online and renew our driver's licence, register the birth of a child, complete a student loan application, and so on. Unfortunately, the reality is quite different.

Online services, though often very convenient, distance the government from the public. French-language services in an office, in person, are absolutely essential and appropriate today for all members of vulnerable groups. These people often need contact with a human being, not with a computer, to benefit from a government program or service. Not all services can be delivered online; examples include rehabilitation programs in hospitals, labour market integration programs, immigration programs, children's aid programs and even access-to-justice programs. Francophone citizens need to receive these services in their language, especially when they are in a disadvantaged situation or a crisis.

Designation confers to the French-language services a greater level of permanence and forces providers to improve the quality of their services.

At the moment, more than 80% of Ontario's Francophones are in one of the 26 designated areas. What about the 20% who are not? They regularly have to travel long distances to obtain service in French. That is a reality for senior citizens, among others.

1.7.1.4 Harmonization of legislation

It has now been four years since the report on *Access to Justice in French*[19] was published in 2012. One of its conclusions was quite similar to what the Commissioner had been saying about the gaps and ambiguities in current legislation that impede access to services in French, particularly in the justice sector.

These gaps are in the two provincial laws that establish language rights in Ontario's court system: the ***French Language Services Act*** and the ***Courts of Justice Act***. As the Commissioner has noted, the 26 areas designated under the ***French Language Services Act*** and the areas designated under the ***Courts of Justice Act*** are not at all identical. This

19 Available online: www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench_bar_advisory_committee/ (page consulted in May 2016).

makes access to justice in French substantially and substantively more complicated for those who find themselves dealing with the authorities.

Yet, there is a ray of hope. In 2015, the Ministry of the Attorney General published a report entitled *Enhancing Access to Justice in French: A Response to the Access to Justice in French Report*.[20] The report indicates that the Office of Francophone Affairs has taken steps to explore ways of harmonizing the two acts.

Making Ontario one large designated area would resolve the inequities caused by this lack of harmonization. For all the reasons mentionned above, **the Commissioner recommends that the Minister Responsible for Francophone Affairs propose the designation of the entire province of Ontario under the amended *French Language Services Act*.**

1.7.2 Designated agencies

Under the ***Act***, an agency can obtain designation under which the government recognizes its competence to provide all or some public services in French in accordance with the criteria established by the Office of Francophone Affairs (OFA).

Unlike government agencies, which are required ***de facto*** under the ***Act*** to provide public services in French, public service agencies can also receive designation under the ***Act***. This designation process is voluntary and can be undertaken by not-for-profit and private agencies, such as the Sudbury YWCA, as long as they are providing programs and services to the public.

Designation of an agency under the ***Act*** thus creates a quasi-constitutional guarantee that the government is committed to having services delivered in French on a permanent basis.

In 2012, the Commissioner recommended to the Minister Responsible for Francophone Affairs that a mandatory directive on the designation process for agencies be established in compliance with the ***Act***, after due consultations with representatives from the community and designated agencies. The following year, the Commissioner

20 Available online: www.attorneygeneral.jus.gov.on.ca/english/about/pubs/fls_report_response/index.html (page consulted in May 2016).

was delighted to see the establishment of a working group to consider modernization of the agency designation process. This led, in 2014, to the introduction of a new designation plan.

1.7.2.1 New process in effect

This designation plan concerns both new applications for designation and the evaluation of agencies that are already designated.

One of the new criteria in this accountability mechanism requires that designated agencies submit, every three years, "a resolution by the board of directors attesting that the agency has remained compliant with the criteria for designation and that the board of directors and senior management team are aware of the legal consequences of submitting a false attestation, including the possibility of having complaints filed with the Commissioner for French Language Services."[21] The Commissioner welcomes these ***post factum*** verification measures, though they can hardly prevent situations where designated services are transferred to a non-designated agency, for example. Unless the process for revocation of designation has been followed, such transfers would contravene the ***Act***, as would the closure of a designated agency. That was the case for the Penetanguishene General Hospital, a partially designated agency under Ontario Regulation 398/93, made under the ***Act***.

1.7.2.2 Example of the Penetanguishene General Hospital

In 2014, the Commissioner's Office launched an investigation into the announced closure of the Penetanguishene General Hospital. The closure followed its 2008 amalgamation with the Georgian Bay General Hospital (GBGH), which was a non-designated agency.

However, the closure was carried out without following the process for revoking designation required by the ***Act***. Neither the Ministry of Health and Long-Term Care (MOHLTC) nor the Local Health Integration Network (LHIN) attempted to have the hospital's designated status under Regulation 398/93 revoked.

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21 For more information: http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/025-00035E~1/$File/00035E.pdf (page consulted in May 2016).

Upon notification of the investigation, the ministry provided all requested documentation and advised North Simcoe Muskoka LHIN and GBGH that the closure of the GBGH Penetanguishene site could not take place until the GBGH Midland site became designated under the ***French Language Services Act***, which required an amendment to Ontario Regulation 398/93 made under the ***Act***.

The ministry has demonstrated its commitment to working with its stakeholders, including the LHIN, Entité 4, the GBGH, the OFA and the community to ensure that designated French language services at GBGH are at a comparable level to those at the former Penetanguishene General Hospital.

This case illustrates a succession of weak accountability mechanisms between the agencies that fund, manage and plan service delivery; the LHINs; and the agencies that actually provide the French-language services. It also shows the OAF's limited accountability to monitor designated agencies' compliance with the ***Act***. The ministry should continue to work with its partners to strengthen all the accountability mechanisms between the aforementioned agencies.

1.8. Rights and obligations

1.8.1 Right to French-language services

Legislators included two obligations in the ***French Language Services Act*** with respect to the right to French-language services. Section 5 clearly states that a citizen has the right to use French to communicate with the government and to receive services from the government. These two components, communication and services, are clear and straightforward obligations that apply to both the government and its agencies.

For example, a man who took his case to the province's Human Rights Tribunal told the Ministry of Community and Social Services over and over again that his preferred language of communication was French. The Ministry sent him a document that it said was bilingual. However, at the bottom of the document, it was clearly noted that there was no French version. The Ministry quickly corrected the situation, ensuring that it would not happen again.

1.8.1.1 Communication with the public

The concept of communication in its broadest sense is central to the right to services in French under section 5 of the ***Act***. It is this context that we need to reanalyze the Communications in French Directive, which the government introduced in 2010. This directive, mandatory for all government ministries and agencies, accompanied by guidelines that are also mandatory, is intended to support the government's commitment to forge closer relations with the Francophone community and ultimately to satisfy or even exceed the requirements of the ***Act***.

However, the Commissioner notes that since the adoption of the directive and its guidelines, and despite the recommendations arising from his investigation report on the H1N1 flyer, many failures have occurred and are still occurring.[22]

1.8.1.2 Government advertising

Unlike the federal ***Official Languages Act***, the ***French Language Services Act*** has no provisions spelling out requirements for **government advertising**. In response to complaints received during the year, the Commissioner launched an investigation. The purpose is to determine whether the Communications in French Directive is explicit enough about advertising requirements, and if it is, whether they are being met by government agencies.

22 Office of the French Language Services Commissioner, *An Investigation Report Regarding an English-Only H1N1 Flyer: From communication crash to communication coup*, Toronto, 2011.

For Ontario's French-language media, the stakes are high. Their survival may even depend on it. For French-speaking citizens, the issue is just as critical because, without access to information in their language, they cannot access information that concerns them in the same way other Ontarians can.

For the sake of clarity in a future revision of the ***Act***, the matter of government communications, including advertising and the use of social media, must be clarified once and for all.

1.8.1.3 Social media

Social media are now part of the government communications landscape. Provincial ministries and agencies are using the web, blogs, Facebook, Twitter and so on to get their message out quickly. Yet, social media are also a form of direct communication with citizens. Those often unfiltered conversations necessarily entail equally direct and rapid responses, in both English and French, in the language preferred by the citizen.

However, all too often, government ministries and agencies forget to produce a French version of their newsletters, for example. Or, because of short deadlines, they resort to machine translation engines, which produce very poor-quality results, to say the least.

Yet, the government's guidelines on communications in French are unequivocal: when social media are used, everything must be posted in both languages or in a bilingual format. The content can be different between the two languages to make it more relevant to the audience concerned. In the Commissioner's view, however, caution must be exercised because while it is true that specific communications in French are sometimes needed, in other cases, the bulk of the content of the English-language message applies to both the majority and the Francophone community, and should therefore be disseminated in both languages.

From this perspective, **the Commissioner therefore recommends that the Minister Responsible for Francophone Affairs propose to incorporate into the *Act* certain essential principles from the Communications in French Directive.**

1.8.1.4 Politicians, officers of Parliament and executives of government agencies

The situation becomes more complicated when a government spokesperson (e.g., a minister or a, subject expert) uses social media. The guidelines indicate that if the person does not speak French, his/her statements should be accompanied by a summary in French, with a note to the effect that any member of the public may request a full translation.

In the Commissioner's view, this procedure is inadequate. The guidelines are clear concerning the use of social media by ministries and agencies: **all communications should be in both languages. It is hard to imagine why things should be any different for government officials.**

The Commissioner understands that the main reason for using social media is to communicate directly with the public, in an era where transparency and rapid response are essential. Be that as it may, the spirit and the letter of the ***French Language Services Act*** must be observed. In other words, **the nature of the message must be taken into consideration**. It does not matter much if the account owner says he/she is writing as an "individual".

For the Commissioner's Office, the nature of the message serves as a parameter in the handling of complaints about communications. It serves to determine whether a minister, including the Premier, a government official or an officer of Parliament is complying with the spirit of the ***Act***. This means that, for the Commissioner, there is a big difference between announcing a recent speech on Twitter, with a link to the actual speech (which should be published in both languages), and commenting on the latest

hockey game between the Toronto Maple Leafs and the Ottawa Senators (which needs no translation).

The Commissioner is aware that we are living in a time where immediacy is everything. However, if government information warrants distribution, the necessary time must be taken to ensure that the information is accessible to every member of the public, including Francophones. **He therefore recommends that the Minister Responsible for Francophone Affairs ensure that in the revision of the *French Language Services Act*, it is made clear that for any use of social media, including by a public official, when the nature of the initial communication is governmental, the communication must be disseminated simultaneously in both French and English.**

1.8.1.5 Concept of service

For the sake of clarity, a revised *Act* should clarify the definition of "service". Service in French must be moulded to suit the development of Ontario's Francophone communities.

Moreover, the Commissioner is of the opinion that to achieve substantive equality in French-language services and thus be useful and effective, **government policies and programs must be designed and tailored to meet the specific needs of Ontario's Francophone citizens**.

The Supreme Court's decision in the *Desrochers* case[23] confirms that substantive equality in service delivery may require, **depending on the nature of the service being provided, not only different content but also community participation in developing and delivering the service in question**. Translation alone is therefore not sufficient in every case to meet the needs of Francophone communities and in no way reflects the principle of substantive equality.

23 *Desrochers v. Canada (Industry)*, [2009]1 S.C.R. 194.

1.8.1.6 Limitation of obligations under section 7

The notion of "services of equal quality" can be very useful in the interpretation of the same concept in the ***Act***, although section 7 may qualify that slightly. It talks about the limitation of obligations if all reasonable measures have been taken and all reasonable plans have been made.

Fortunately, the Ontario Court of Appeal, in the ***Lalonde*** case, clarified the interpretation of this section when the Ontario government attempted in vain to use it to restrict its obligations.

> "While the Commission, and now the Minister, may exercise a discretion to change and to limit the services offered in French by Montfort, it cannot simply invoke administrative convenience and vague funding concerns as the reasons for doing so (...) The Commission may not issue a directive removing available services in French from Montfort, particularly when the services are not available in French on a full-time basis elsewhere in the Ottawa-Carleton region, without complying with the 'reasonable and necessary' requirement of the F.L.S.A." [24]

In other words, you cannot simply say that you tried to provide the service but it did not work. For example, under the Landlord and Tenant Board's Rules of Practice, when a bilingual member is not available within a reasonable time, the client is entitled to interpretation services.[25] This is unacceptable and contrary to case law, since "the exercise of language rights must not be considered exceptional, or as something in the nature of a request for an accommodation."[26]

French-language services are not only an obligation of means, but also of outcomes.[27] If this section survives a revision of the ***Act*** — which the Commissioner does not want,

24 *Lalonde v. Ontario*, *op. cit.*, para. 168.

25 For more information: http://www.sjto.gov.on.ca/documents/ltb/Rules/LTB%20Rules%20of%20Practice.html (page consulted in May 2016).

26 *R. v. Beaulac*, [1999] 1 S.C.R. 768, para. 24.

27 In the *Desrochers* case, it was demonstrated that the process of providing services must be equivalent in English and French, and that the outcome — i.e., the delivery of a quality service — must also be equivalent.

by the way — it must continue to be interpreted in light of the general purpose of the ***Act*** and the well-established principles of interpretation of language rights and the unwritten principles of the Canadian Constitution, including the principle of respect for minorities. **The scenario that is most coherent and consistent with case law would be to simply drop this section.**

1.8.1.7 Appointments

The Ontario government's Public Appointments Secretariat says it is constantly looking for the real face of diversity and regional representation.

Although Prince Edward Island's sociodemographic reality is not comparable to Ontario's, it is worth noting that the percentage of Francophones is roughly the same in both provinces. Under section 6 of Prince Edward Island's ***French Language Services Act***,[28] the Lieutenant Governor in Council or the head of a government institution must give consideration to the representation of members of the Acadian and Francophone community when making an appointment to an agency, board or commission.

Even though Francophone communities make up only about 5% of Ontario's total population, they are nonetheless dynamic and very active in the province's social, economic, cultural and political development. Adequate representation of Francophones in extremely important government agencies, such as the LHINs, in the health sector, on the various decision-making tribunals, and on other boards and commissions, makes it possible to better represent, better understand and therefore better serve the public.

1.8.2 Exemptions

In Ontario, there is a legal provision for the exemption of government ministries and agencies from translating publications into French. That provision appears in Ontario Regulation 671/92, Exemptions.[29]

Under this regulation, sections 2 and 5 of the ***French Language Services Act***[30] do not

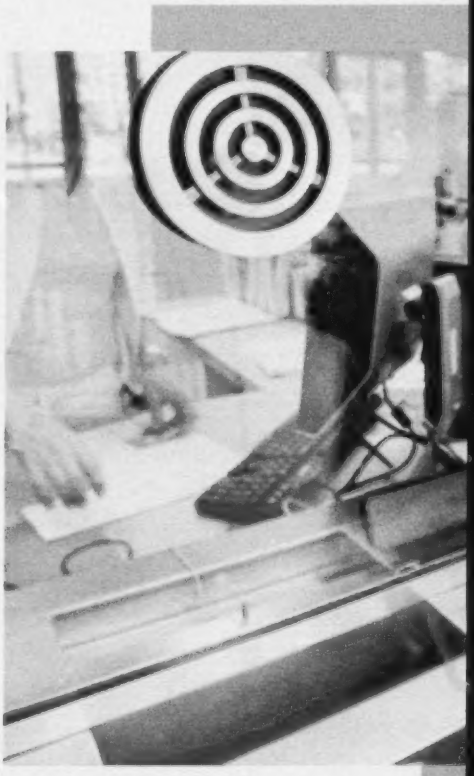
28 *French Language Services Act* of Prince Edward Island, c. F-15.2.
29 For more information: www.ontario.ca/laws/regulation/920671 (page consulted in May 2016).
30 Section 2 requires the government to ensure that services are provided in French, and section 5 concerns the right to use French in communicating with the government or receiving services.

apply in the following situations:

- Publications or appendices that are of a scientific, technical, reference, research or scholarly nature and that are:
  - (i) not normally made available to the public ***or***
  - (ii) normally consulted by members of the public with the assistance of public servants.

Ministries that have a translation exemption for a publication must provide the public with a summary of the document, and publish a notice indicating the name and telephone number of a bilingual person to contact for more information.

Since the ***Act*** and the associated Regulation 671/92 often seem to be misinterpreted, they are often incorrectly applied. The exemptions regulation was intended to exempt a limited range of government publications from translation into French.



1.8.3 Active offer

The Commissioner promised last year to revisit the question of active offer, which is still considered a priority issue. This re-examination of the issue is associated with the celebration of the ***French Language Services Act***'s 30th anniversary in 2016. On this occasion, the Commissioner is advocating a revision of the ***Act*** so that the principle of active offer will be enshrined therein, in clear and straightforward terms.

Accordingly, he published his special report on active offer in the spring of 2016.[31] The report focuses on the need for the Ontario government to take concrete measures and acquire the necessary instruments to ensure that ministries, agencies, entities and third parties that provide services on the government's behalf implement the active offer of service in French.

31 Office of the French Language Services Commissioner, *Special Report — Active Offer of Services in French: The Cornerstone for Achieving the Objectives of Ontario's French Language Services Act*, Toronto, 2016.

The ***Act*** does not explicitly mention Francophones' right to be actively offered services in their language. In the absence of such a provision, progress on active offer is likely to be difficult and slow. Nevertheless, some entities have made active offer a standard of service, even developing some expertise on the subject.

The Commissioner's Office also acknowledges that Regulation 284/11[32] is a step in the right direction for active offer, but it only requires active offer by third parties that provide French-language services on the government's behalf, not by government organizations as such.

Without active offer, the quality of the services provided suffers. Sometimes the lack of active offer has tragic consequences in emergency or crisis situations. Francophone citizens in vulnerable situations are the most seriously affected.

While the following testimony did not lead to an investigation or a complaint, it is telling. In April 2015, Mélissa had to call 9-1-1 twice for a family crisis; a member of her family was suicidal. The first time she called, she asked for service in French but could not get it. She had to speak English to two Ontario Provincial Police officers.

> "I am a capable person, but you know when you are in a crisis situation [...] I would really have appreciated being served in French [...] I was always groping for words and, you know, anyway, it wasn't easy for me to explain the situation, especially since it was a serious crisis."[33]

32 Available online: www.ontario.ca/laws/regulation/110284 (page consulted in May 2016).
33 Personal account of Mélissa, F, age 35.

As we approach the ***Act's*** 30th anniversary, there can be no doubt that stricter regulation of the obligation to "actively" offer service in French is the keystone to achieving its objective for the Francophone community.

In his special report, the Commissioner recommended that the Minister Responsible for Francophone Affairs take the necessary measures to have the *Act* amended to include a provision on active offer. These changes should be based on a provincial strategy on active offer of service in French developed by the Office of Francophone Affairs in conjunction with the French-language services coordinators. The Commissioner also recommended to the Minister that the recommendations on active offer be implemented no later than the spring of 2018.

1.9. Regulatory colleges

The regulatory colleges, established by Ontario laws, come under provincial jurisdiction. Their role is to protect the public, to regulate the practice of the profession and govern the activity of members. Since they are self-managed, self-funded and therefore independent, they are not recognized as government agencies as defined in the ***Act***. There is a legal debate on this point, though not before the courts at the moment, since many people, including the Commissioner, believe that the regulatory colleges are similar to an institution of the Legislature within the meaning of the ***Act***.

The Commissioner's Office receives complaints about regulatory colleges, both from the public and the members, as some face language-related challenges. When a dispute arises between a college and one of its members, it can cause a lot of headaches if an appeal and review board holds a hearing in French, for example. If the documents required for the investigation are available only in English from the college, it could have disastrous consequences for a member in good standing who is being investigated.

However, since the regulatory colleges' responsibilities include protection of the public interest, Ontario's lawmakers have imposed certain obligations with respect to French-language services, particularly for the colleges associated with the health professions.

1.9.1 Regulated health professions

Section 86 of the *Health Professions Procedural Code* essentially gives a person or a member in good standing of a college the right to use French in all dealings with the college. Further, it states that its "Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College."[34]

The Commissioner's Office has received complaints in the past about regulatory colleges that were sometimes slow in implementing section 86. In some cases, there was clearly resistance to the Commissioner's intervention because his power to investigate was in question. In other cases, there was reluctance to recognize members' right to receive information and documentation in French about their profession. This presents a significant challenge for Francophones who want to become members of a regulatory

34 *Regulated Health Professions Act, 1991*, c. 18, Schedule 2, s. 86 (2).

college. For example, a nurse from Quebec, even if she has years of experience, is not recognized by the Ontario college. The same may also be true of Francophone immigrant nurses. But how can one join a college when the forms, examinations and information about the membership process are in English? A complaint about this in the past was quickly resolved with the College of Nurses of Ontario.

Thus, the Commissioner's Office has a number of reasons for keeping an eye on the health professions. The members and especially the public, including the Francophone public, must be reassured that they are being listened to and properly protected. A revised ***French Language Services Act*** must cover the regulatory colleges, at least the ones that govern the health professions, and include sections that spell out their obligations to provide French-language services for their current and future members.

The Commissioner therefore recommends that the Minister Responsible for Francophone Affairs propose the explicit inclusion in the amended *French Language Services Act* of the regulatory colleges' obligations related to French services, both with respect to the public and the colleges' members. This would automatically give the Commissioner the power to investigate, a power that is currently being contested by several colleges.

1.10. Human resources strategy

The Commissioner believes that despite the initiatives undertaken, mainly by the Office of Francophone Affairs, the public service still has not formulated any real human resources plans for French-language services. All too often, the complaints received by the Commissioner's Office indicate that there were no French-language services because the bilingual employee in a designated position was not at work.

Last year, a complainant and his daughter called the 1-888-772-9277 line of the Investigation and Enforcement Unit (IEU) of the Ministry of Municipal Affairs and Housing on two occasions. They quickly realized that there were no officers available who could respond to them in French. When the Commissioner's Office checked into the complaint, it encountered the same problem. The Ministry explained that its bilingual compliance officer was on maternity leave. Her replacement had unexpectedly been called back to her home position before the end of her assignment in the IEU. According to the Ministry, the employee on maternity leave was scheduled to return shortly, which made it difficult to identify and hire a qualified replacement for this compliance role. In the interim of hiring a qualified bilingual compliance officer to provide services in French, the IEU answered its calls in French through Language Solutions, a telephone interpretation service. In the Commissioner's opinion, using the services of an interpreter through Language Solutions does not constitute a level of service equivalent to the service provided to an Anglophone citizen who calls the IEU. Above all, it does not fill a vacant bilingual position.

As a result of this lack of planning for competent bilingual human resources, the approach to and compliance with practices for designated bilingual positions depend on the good will of individuals and managers rather than on rigorous systemic practices.

The Commissioner has concerns about what evaluation criteria are used to help ministries follow good practices with regard to designated bilingual positions, about what concrete measures the government is taking to ensure that French-language services are maintained through those positions, and about the inventory of bilingual employees in the public service and the strategies for recruiting and retaining them.

Moreover, the current approach of solely designating individual positions is outdated and jeopardizes the continuous provision of quality services in French. A human resources strategy for planning French-language services should be based on the designation of units, teams and divisions responsible for providing service in French. By basing the delivery of French-language services on multidisciplinary teams with a critical mass of bilingual employees, the new government strategy would ensure the permanent availability of quality French-language services. This would also solve the problem of recurring deficiencies due to temporary absences of employees in designated positions.

That said, in view of the government's desire to provide services to the public through third parties, it would also make sense to explore opportunities in conjunction with Ontario's Francophone communities,[35] such as multiservice centres that are managed in French but serve the entire population.

As part of a revision of the *French Language Services Act*, **the Commissioner recommends that lawmakers include more specific obligations regarding staffing in order to ensure that, beside having designated individual positions, work teams, units or divisions be designated to serve the Francophone public and to actively offer services in French.**

35 The Commissioner has dealt with this issue in several annual reports, including the 2010-2011 report entitled *A Shared Engagement*, in which he urged the Francophone community to take an active part in the process of revitalizing the delivery of government services by suggesting innovative, pragmatic, results-oriented methods and means to ensure the community's development.

1.11. Roles and responsibilities

1.11.1. Minister Responsible for Francophone Affairs

The current functions of the Minister Responsible for Francophone Affairs are specified in section 11 of the ***French Language Services Act***. The Minister's primary function is to administer the ***Act***. Other functions involve the development and coordination of the government's policies and programs relating to Francophone affairs and the delivery of French-language services. The ***Act*** states that for this purpose, the Minister may prepare and recommend policies and programs in accordance with the government's priorities for the provision of French-language services. The Minister may also coordinate, monitor and oversee the implementation of programs for the provision of French-language services and programs relating to the use of the French language.

In addition, the Minister may make recommendations on the funding of such programs, require the formulation and submission of plans, and fix time limits for their formulation and submission.

These powers given to the Minister are very positive. The ***Act*** also requires the Minister to submit a report on the activities of the Office of Francophone Affairs to the Lieutenant Governor in Council at the end of each fiscal year. The report must also be tabled in the Legislative Assembly.

In other words, the Minister Responsible for Francophone Affairs is required to communicate and demonstrate to the public how all these powers are being used. The Commissioner has raised this point in recent years and reiterates it here: one way of making the work of the Minister and the Office of Francophone Affairs more transparent is to fulfill its obligation to submit annual reports, as the ***Act*** provides in section 11(3).

1.11.1.1 Promotional role

One of the elements that is missing from the ***Act*** is the essential role of promoting it, and especially of promoting language rights and citizens' ability to demand service in French.

In his 2009-2010 annual report, the Commissioner made a recommendation that the government develop an ongoing strategy to promote the offer of government services in French to Francophones throughout Ontario. In the federal ***Official Languages Act***, there is an entire section devoted to the promotion of the linguistic duality. In New Brunswick, where the Premier is responsible for implementing the ***Official Languages Act***, the government must prepare a plan setting out how it will meet its obligations under the ***Act***, including measures to ensure the equality of status of the two linguistic communities and the equality of public services in the two languages.

On the basis of these ideas, **the Commissioner recommends that the amended *French Language Services Act* give the Minister Responsible for Francophone Affairs the mandate to develop policies and programs to promote:**

- **the use and development of the French language in every sector of Ontario society;**
- **increased learning of, proficiency in and vitality of the French language;**
- **public awareness and appreciation of the history, use, status, importance and diversity of the French language in Ontario;**
- **increased production and use, in every sector of Ontario society, of French-language materials in every type of media;**
- **public understanding of the *Act* and its associated regulations;**
- **recognition of and support for the French language on the national and international scene and by the private sector, including legal recognition.**

1.11.2 Role of the Office of Francophone Affairs

Since he took office in 2007, the Commissioner has always recognized the important, even crucial, role that the Office of Francophone Affairs (OFA) plays in the preparation of policies and programs and in the delivery of French-language services within the provincial government.

In fact, the Commissioner has always taken great interest in accountability for French-language services and the OFA's role in exercising that government accountability on behalf of Francophone citizens. The government must ensure that it has integrated management of French-language services in all government agencies, both operationally and in the development of policies, practices and programs. That is where the OFA has the ability to play a pivotal role.

1.11.2.1 Executory body

Under section 12(2) of the ***Act***, the OFA may make recommendations on the quality of French-language services, recommend designations of agencies, demand information about future designations, and propose changes in the provision of French-language services. The ***Act*** also requires that the OFA perform any other function assigned to it by the Minister, the Executive Council or the Legislative Assembly. That is one of the reasons it has a policy division, small though it is, to work on developing and deploying policies on French-language services.

In practice, however, the OFA's role in the provincial public administration is a consultative one. The OFA is perceived as an office that can, at the ministries' request, provide opinions, advice and recommendations on the concerted and coordinated implementation of French-language services. These are essentially advisory functions. The OFA's opinions do not have a lot of visibility and are issued to encourage ministries to coordinate and plan French-language services more effectively. It not only serves as sort of a "quasi-ministry" of Francophone affairs but also prepares a variety of documents for the Minister, such as speeches, correspondence and briefing notes. The communications needs are considerable in view of the small number of employees assigned to this task, in contrast to other ministries.

Hence, the Commissioner is revisiting a question that he has raised before over the years, i.e., whether the OFA's available resources are equal to its aspirations to carry out its extensive mission. The observation he made in 2009 still stands in 2016: there has not been a significant or permanent increase in the OFA's financial resources since 1998. In fact, the opposite is true. Clearly, with its place in the government hierarchy and its limited budget, the OFA's ability to carry out the mandate assigned to it by the government is restricted.

The Commissioner continues to plead for depoliticization of the OFA's budgets, as French-language services are a right, not a privilege, given to Francophone citizens. Neither the OFA nor French-language services can be funded at the whim of the government of the day. The government must therefore give the OFA the place it deserves so that it can carry out its mission under the ***Act***. Accordingly, the Commissioner is reminding the Cabinet once again that there is a need to increase the OFA's resources for the next fiscal year and subsequent years.

1.11.2.2 Entrenching powers

Hence, the powers of the Office of Francophone Affairs are largely advisory. In support of the Minister, it can require the formulation and submission of implementation plans and can fix time limits to this effect. However, it cannot compel ministries or third parties to set their priorities in a way that is compatible with the ***Act***. As per its mandate,[36] and in its role as advisor to ministries and government agencies, the OFA relies on its ability to persuade and influence. While the OFA was part of Cabinet Office in its early years and had a corresponding level of corporate oversight and influence, that is no longer the case.

This needs to change so that the OFA will be assured both of real accountability for its initiatives within the government and of fulfilling its primary mission of working with the ministries to ensure that the ***Act*** is implemented. The OFA must have decision-making power and influence in the halls of government. It is important to bear in mind that 30 years ago, in the discussions regarding the passage of Bill 8, some people wanted the OFA to be a ministry.

36 See section 12.2 (d) of the *Act*.

The Commissioner is not commenting on this issue, but **he recommends that, without altering the OFA's mandate with regard to administering the functions of the Minister, the OFA's Deputy Minister *also* become a Deputy Associate Secretary of Cabinet Responsible for Francophone Affairs. With this enhanced authority and accountability, the OFA's DM could better exercise its role as lead government steward for the ongoing implementation of the *French Language Services Act*.**

1.11.3 Role of the French-language services coordinators

Section 13 of the ***French Language Services Act*** does not say much about the roles and functions of the French-language services coordinators. It requires that a French-language services coordinator be appointed in each ministry. It also states that the Office of Francophone Affairs will coordinate a committee made up of all the coordinators. In addition, it gives each French-language services coordinator the authority to communicate directly with his/her deputy minister. Since 2007, the Commissioner has tried to point out the discrepancies in the roles of the coordinators who have held office over the years. He is revisiting the matter in 2016 with a view to return to a strict application of the ***Act***.

When the ***Act*** came into force in 1989, the coordinator positions were classified at a high level because the incumbents had to have direct access to their deputy ministers. The way the ***Act*** is worded suggests that that role was supposed to be proactive and influential. Over time, however, the status of most coordinators has changed, and they no longer have access to their deputy ministers. In many cases, their role has become reactive, as the lack of resources and staff does not facilitate their participation in the initial policy and program development process. Although they are responsible for responding to complaints forwarded by the Commissioner's Office, that intervention often occurs too late in those processes.

An outside evaluation of the structure of French-language services in the public service was conducted by a private firm in 2004. It indicated that the coordinator role should involve such matters as integration of the ***Act*** into the ministry's operations and service delivery processes, including short- and long-term strategic planning, consultation on policy development, facilitation of oversight, problem-solving, liaison

and communications, education and community relations. Although it seems clear that the coordinators are supposed to play a central role in the apparatus of government, we see that all too often, they are "stuck" between the ministry or ministries and the Office of Francophone Affairs, i.e., between a rock and a hard place.

Since the introduction of a new structure consisting of groups of ministries in 2009, several ministries have shared the same French-language services coordinator.

The new French-language services (FLS) coordination structure implemented in 2009 added three new clusters to two existing teams (Justice and Health) that were organizationally sound and focussed on serving two ministries each. The three new clusters, on the other hand, were created by transferring existing resources from the ministries forming the clusters, with the recognition that these resources were not sufficient and that additional resources would be sought. Seven years later, the FLS Clusters continue to serve up to eight ministries each without additional resources. Meanwhile, the level of requests for information and the number of new initiatives has grown steadily, putting even more pressure on the existing resources. Although the cluster model has reduced the isolation of the FLS coordinators, and provided access to the support of colleagues and a dedicated manager, the cluster would strongly benefit from a more robust infrastructure and additional cluster resources.

The Commissioner is aware that many government initiatives are launched without any involvement by the coordinators from the outset. Unless a coordinator is high enough in a ministry's organizational hierarchy, which is rare, he/she will have very little influence over the development of the ministry's policies and programs. Since decisions are made in advance and not after the fact, this structure does not benefit Francophones.

However, it was clear that the lawmakers' original intent was to ensure that the coordinators would have direct access to their respective deputy ministers so that they could facilitate this work of designing, planning, coordinating and monitoring the various ministry initiatives. Yet, the perception of the real role of the French-language services coordinators is no longer what it was supposed to be. The coordinators are still associated with "a translation or interpretation service" within their ministry. For those who do not have access to their deputy ministers, their role is often limited to putting out fires and resolving complaints. As a result, in 2011-2012, the Commissioner

recommended that an independent, interministerial evaluation be conducted of the government structures and processes concerned with the implementation of French-language services within the government. In response, the government indicated that the Office of Francophone Affairs had issued a request for proposals from consultants capable of carrying out such an evaluation. Five years later, the Commissioner would like to know the results of that evaluation, compelling as they may be.

The idea is to go back to where we started. The work of the French-language services coordinators must be to support deputy ministers. The ***Act*** is clear in this regard, authorizing them to communicate directly with their deputy minister. The issue is accountability for the planning of French-language services.

The Commissioner is emphatic on this point: the coordinators must play a key role in the government. They must identify the priorities of their government ministries or agencies based on the development and growth needs of the province's Francophone communities. It is important for them to be able to develop a process for consulting the Francophone communities and to prepare plans for French-language services based on stated needs. They must have a quasi-organic relationship with the Office of Francophone Affairs and the Advisory Council on Francophone Affairs. In short, their role is to ensure that ministries and other government agencies work in advance rather than after the fact, and that eventually, the much-advocated "Francophone reflex" is well honed within the ministries.

To this end, **the Commissioner recommends to the Minister Responsible for Francophone Affairs that the role of the French-language services coordinators be clearly redefined, with a view to empowering them, in a revised *French Language Services Act*, so that they may play an influential and strategic role in the design and development of all programs and services that government ministries and agencies intend to initiate.**

1.11.4 Role of the French Language Services Commissioner

The functions of the French Language Services Commissioner are set out in section 12.2 of the ***French Language Services Act***. The Commissioner is responsible for encouraging compliance with the ***Act***. He does so by conducting investigations regarding French-language services in response to complaints or on his own initiative. That is the primary task of the Commissioner and his team: receive complaints from the public, process them, investigate, and if applicable, table reports. The ***Act*** says the Commissioner may advise the Minister. This implies a notion of dialogue with the Government. And to establish such a public and open dialogue, the Government must answer in opportune time recommendations of the Commissioner, whether they agree or not.

The Commissioner monitors progress, advises the Minister and makes recommendations on matters relating to the administration of the ***Act***. He also prepares special reports, investigation reports and annual reports. **In this regards, the Commissioner recommends that the Government answer each of the reports within 90 days following their tabling.**

In addition, the Commissioner is required by the ***Act*** to perform any other functions assigned to him by the Lieutenant Governor. Should he then have the ability to take legal action? The Commissioner reserves judgement on this question, but he acknowledges that it should probably be debated during public consultations and eventually in a parliamentary committee.

Should the Commissioner have other powers, such as the ability to impose fines or sanctions in the event of non-compliance or failure to fulfil obligations under the ***Act***? For the moment, he is of the opinion that such powers could turn the Commissioner's Office into a decision-making tribunal, which would deprive it of the flexibility to resolve complaints in other ways. The Commissioner expects that there will be heated discussion on this issue during public consultations on possible revision of the ***Act***.

The Commissioner should probably also have a **promotional** role, as his New Brunswick counterpart does. Making Francophones aware of French-language services is imperative if we truly want those services to be fully utilized. Francophones have to be educated to demand service in French. For that to happen, however, they must be aware not only of what services are available, but also, more fundamentally, of what their language rights are.

This new promotional role should also be exercised, in particular, in education. For Francophone communities, everything begins with and depends on education, and that has been true for centuries. For this reason, the Commissioner has not been shy about intervening in the education sector. But aside from investigations, which are nevertheless limited because school boards are not currently under the Commissioner's jurisdiction, his role could also encompass the promotion of French-language education in all of its forms, including French-immersion programs.

It would also be a good thing if, while performing promotional activities, the Commissioner had in his toolbox the ability to provide **training** for the Ontario public service and even the private sector. The Commissioner would like his office to be as proactive as possible and to be in the forefront of all things related to the provision of government services for linguistic minorities..

1.11.5 General provisions — Regulatory power

In the Commissioner's view, you don't amend a statute to deal with maintenance issues. Such matters can be dealt with by regulation. But you have to have the power to make regulations. The ***French Language Services Act*** provides for the making of very few regulations. In fact, regulations may be made namely in the five following cases:[37]

- designating agencies;
- designating areas;
- exempting services, where necessary;
- governing the publication of documents in French; and
- governing the provision of services in French under a contract with a third party.

The Lieutenant Governor in Council has enacted a series of regulations governing designated agencies, designated areas, possible service exemptions and, since 2014, services provided by third parties and the associated obligations of ministries.

It would be desirable to allow for the enactment of other regulations, as is done in Prince Edward Island. It should be noted that it was only recently that that province revised its act. Though based on Ontario's act, Prince Edward Island's version is a significant improvement. For that reason, it is important to take an in-depth look at revised ***Act***, especially its general provisions concerning the regulatory power of the Lieutenant Governor in Council.

37 Sections 8 (a), (b) and (c), and 11(4) (a) and (b).

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2. SOME GOOD MOVES

As he does every year, the Commissioner would like to recognize initiatives by government or municipal institutions in providing services in French.

2.1 Best practices

The best practices selected for this report are initiatives, activities or events that promoted the Francophonie in some exceptional way or were developed with particular concern for improving the situation of vulnerable Francophones.

Commemoration of the 400th anniversary of the French presence in Ontario

The Office of Francophone Affairs worked very hard in 2015 with more than 100 governmental and non-governmental partners putting together key initiatives to mark the 400th anniversary of Samuel de Champlain's visit to Ontario. The activities were held between early summer 2015 (400 years to the date of Champlain's arrival in the territory now called Ontario) and June 2016 (400 years to the date Champlain is said to have left the province). Thanks to the programs developed, Ontarians, other Canadians and people from around the world learned more about Franco-Ontarian culture and heritage during this historic celebration.

The Ontario 400th Celebrations Program was designed and developed by the OFA in conjunction with the Ministry of Tourism, Culture and Sport and the Ministry of Citizenship, Immigration and International Trade. The objective was to support local community initiatives marking the anniversary, stimulate local tourism and create jobs.

Cultural and community groups were encouraged to submit funding applications for these commemorations. A total of 61 projects were selected for the program.

French-language training to combat violence against women

Le Phénix is a provincial community organization that promotes the value and full participation of persons with disabilities. It has developed a range of tools, such as handbooks, awareness workshops and lectures to better serve its clients.

In August 2015, with funding from the Ministry of Community and Social Services, nine Northern Ontario agencies dedicated to combating violence against women collaborated to have ***Le Phénix*** deliver a training course to more than 20 front-line Francophones employees. The course raised their awareness of the realities faced by women with disabilities who request services or assistance. The participants were also provided with strategies for reducing the barriers and obstacles that those women encounter.

It's Never Okay: **2015 Summit on Sexual Violence and Harassment**

As part of Ontario's ***It's Never Okay Act***ion Plan, the Summit on Sexual Violence and Harassment was held in the fall of 2015. In preparation for the event, the project team planned the inclusion of active offer of French-language services in every aspect of the Summit, resulting in a fully bilingual event.

The team consulted Francophone stakeholders in the sector to identify speakers, themes and potential invitees with violence against women prevention expertise. In addition to bilingual volunteers and team members, greetings, signage and reference material were available in French, and simultaneous interpretation and Quebec sign language (LSQ) interpretation were available for participants.

There were also bilingual counsellors for participants who needed to share their emotions triggered by discussions.

In short, the French-language services were visible, available, accessible and announced before and during the Summit.

2.2 Honourable mentions

The honourable mentions recognize initiatives that promoted Ontario's Francophonie or expanded the provision of French-language services. Each one will be the subject of a blog post by the Commissioner in the coming year.

Virtual exhibit on the history of Ontario's Francophonie

The Ontario Museum Association created a virtual exhibit showing important objects in Franco-Ontarian history. More than 35 museums and heritage organizations, including the Hearst Ecomuseum, the Royal Ontario Museum and the Vanier Museopark submitted objects, images and archival materials to create this virtual museum. The exhibit focuses on the contribution of the French presence in Ontario over the last four centuries. The virtual exhibit, #mON400, enhances Ontario's tourism and heritage supply and will help educate future generations.

Promotional leaflet *Le Bon Choix*

This leaflet designed by the Ministry of Citizenship, Immigration and International Trade (MCIIT) promotes Ontario as a destination of choice for Francophone immigrants who want to settle, study, work or raise a family in Canada. This promotional tool will also be used for recruitment at international fairs such as Destination Canada and Canada Week in Paris. It contains links to websites for Francophones interested in moving to Ontario, MCIIT's programs, including the Ontario Immigrant Nominee Program.

Symposium on French-language apprenticeship and trades programs

The Ministry of Training, Colleges and Universities held its first symposium on French-language apprenticeship and trades programs in May 2015. The goal was to encourage partnerships between employers, bilingual employment service providers, and the French-language colleges and school boards.

Presentations and workshops on French-language apprenticeship training provided an opportunity to discuss innovative practices for promoting trades in Francophone communities, and innovative and alternative delivery modes for French-language training, as well as identify gaps in the range of apprenticeship programs available in French.

Audit of the active offer of French-language services

A number of ministries designed and conducted an audit of the active offer of their French-language services. In the fall of 2015, the ministries of the Environment and Climate Change, Aboriginal Affairs, Agriculture, Food and Rural Affairs, Energy, Natural Resources and Forestry, and Northern Development and Mines initiated this first internal audit to gauge the understanding, application and capacity of active offer of French-language services. For reference, a document describing the responsibilities associated with the active offer of French-language services to the public was handed out to employees in designated bilingual positions.

For its part, the Economics Central Agencies French Language Services Cluster (Ministry of Finance), which developed and promoted the Active Offer Audit throughout the network of French Language Services, has been conducting the audit for its clients ministries for five years now.

The audit covers such things as telephone calls, telephone lines and recorded messages intended for the public, and the content of websites, including social media.

Mental health awareness and designation of HIV/AIDS services

With support from the Toronto Central Local Health Integration Network (LHIN), two Greater Toronto Area organizations were able to carry out a project for Francophone communities.

The French-language health planning entity Reflet Salvéo initiated an education project on mental health and associated cultural perceptions. The project involved promotional materials in French, a video contest for kids and peer training, especially for Francophone immigrants, to diminish cultural and linguistic taboos, and boost access to mental health services.

Meanwhile, Action Positive VIH/sida, the only Francophone organization dedicated exclusively to HIV/AIDS in Ontario, received its designation under the ***French Language***

Services Act. With the LHIN's support, the organization aims to serve Toronto's Francophone clients more effectively and advocate prevention in the schools. The proposed measures include enhancing the partner referral approach, updating the website and developing an education plan for the Francophone community.

Seniors' Wellness Symposium

The City of Toronto, in partnership with some Francophone organizations, presented a Seniors' Wellness Symposium in June 2015. This event was held at the Bendale Acres/ Pavillon Omer Deslauriers long-term care home, a senior citizens' centre that provides services in French.

The symposium's theme was cultural and linguistic competency in person-centred care. A number of organizations assisted in organizing the symposium, including three French-language health planning entities — Reflet Salvéo, Entité 4 and the Réseau franco-santé Sud de l'Ontario — and the Fédération des aînés et des retraités francophones de l'Ontario.

The Bendale Acres home also received an award from Entité 4 for its exceptional contribution to the development of French-language services.

2.3 Noteworthy initiatives

The noteworthy initiatives chosen this year helped maintain quality French-language services or went beyond the standards set out in the ***French Language Services Act***. The following initiatives are detailed in the interactive version of this report.

Group of Experts on Francophone Immigration, Ministry of Citizenship, Immigration and International Trade

Information fairs for Francophone seniors, Ontario Seniors' Secretariat

Provincial network of French-language services coordinators, Local Health Integration Networks

Célébrons nos fournisseurs désignés [celebrating our designated providers], North East Local Health Integration Network

Survey on French-language municipal services, City of Greater Sudbury

3. STATISTICS

In the 2015-2016 fiscal year, the Commissioner's Office received 229 complaints. Many of them were individual complaints about a wide variety of issues and genuine concerns ranging from a lack of counter service in French to unilingual-English communications and correspondence, and services that were available but not equivalent to English-language services.

Category	Total
Low Impact	8
Other types of complaints	14
Inadmissible	67
Admissible	140
TOTAL	**229**

Inadmissible Complaints	
Federal	10
Frivolous/vexatious/in bad faith	1
Municipal	11
Private	24
Province	21
TOTAL	**67**

Other Types of Complaints*	
Devolution	2
General	9
Subsidized	3
TOTAL	**14**

* Complaints within the provincial government's purview and related to agencies created or mandated by various ministries to offer programs and services that, in cases of devolution, were previously delivered by the province.

Admissible Complaints by Institution	Total
Designated agencies**	3
Legislative Assembly***	1
Ministry of Agriculture, Food and Rural Affairs	1
Ministry of the Attorney General	27
Ministry of Children and Youth Services	6
Ministry of Citizenship, Immigration and International Trade	3
Ministry of Community and Social Services	5
Ministry of Community Safety and Correctional Services	4
Ministry of Energy	7
Ministry of the Environment and Climate Change	3
Ministry of Finance	12
Ministry of Government and Consumer Services	22
Ministry of Health and Long-Term Care	17
Ministry of Labour	3
Ministry of Municipal Affairs and Housing	2
Ministry of Natural Resources and Forestry	4
Ministry of Northern Development and Mines	1
Ministry of Tourism, Culture and Sport	5
Ministry of Transportation	9
Municipalities****	5
TOTAL	140

Geographic distribution of 2015–2016 complaints	
Outside of designated areas	5.5%
Northwestern Ontario	4%
Northeastern Ontario	9%
Eastern Ontario	46%
Central Ontario	34.5%
Southwestern Ontario	1%

** Complaints related to designated agencies and institutions under the *French Language Services Act*.
*** Complaints related to entities that report directly to the Legislative Assembly.
**** Complaints deemed admissible when they are brought against a municipality that has a by-law that guarantees the provision of French-language services.

CONCLUSION

A necessary change

With his 2015-2016 annual report, the Commissioner has but one goal: to demonstrate the necessity of revising the ***French Language Services Act***.

The ***Act*** is obsolete and outdated. Ontario cannot pull back in an area where, in 1986, it led the way by passing the ***French Language Services Act***. Thirty years later, the Francophonie has evolved, but the ***Act*** has not. It no longer reflects today's reality. In other provinces and territories, laws have been modernized to better address the needs of the minority language communities. It is high time the Ontario government got with the program.

What the Commissioner has in mind is a makeover that is consistent with the times and the dynamic nature of the Francophonie of 2016. A Francophonie for whom the boundaries of designated areas no longer make sense because of population change and mobility. A Francophonie whose communications and dealings with the government take place over every available technological platform, including social media. A Francophonie where active offer is a wise idea. A Francophonie for whom the delivery of government services has become so diverse that the definition of "government agency" also needs to be updated.

In the Commissioner's view, a revision of the ***Act*** necessarily begins with consultations with the community and its stakeholders. They must be involved from the beginning. A process of collective and inclusive reflection is required.

The Commissioner would like to see those consultations undertaken during the current session of the Legislature, but no later than the fall of 2016.

With an expanded team, more human and financial resources, strong partners, and a desire to be more proactive, the Commissioner wishes to assist the government in this challenging social project, which will have a real and lasting impact on the 612,000 Francophones who make up today's community and also on future generations.

Make way for ***FLSA*** 2.0.

Commissariat aux
services en français
de l'Ontario

Office of the
French Language Services
Commissioner of Ontario